

REMARKS/ARGUMENTS

Claims 1-29 are pending in the present application. Claims 1, 2, 4, 5, 7, 10, 11, 13-19, 22- 25 have been amended herewith. Reconsideration of the claims is respectfully requested.

I. 35 U.S.C. § 101

Claims 1-10 and 12-22 stand rejected under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. This rejection is respectfully traversed.

In rejecting these Claims 1-10 and 12-22, the Examiner cites several US Supreme Court cases (Diamond v. Dier; Parker v. Flook; Gottschalk v. Benson; and Cochrane v. Deener) as holding that a claim is only statutory under 35 USC 101 if it is (1) tied to another statutory class, or (2) transforms the underlying subject matter to a different state or thing. Applicant urges error in such assertion regarding US Supreme Court precedent, as none of the cited US Supreme Court cases have held that this two-part test is the exclusive test for determining statutory subject matter. For example, the US Supreme Court just recently granted a certiorari petition to determine if this is a proper two-part test for determining proper statutory subject matter.¹ Applicant has in any event amended the independent process claims to explicitly tie such claims to another statutory class in order that this case can expeditiously pass to issuance.

Therefore the rejection of Claims 1-10 and 12-22 under 35 U.S.C. § 101 has been overcome.

II. 35 U.S.C. § 102, Anticipation

Claims 10, 11, 13, 14, 23, and 29 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Motz (WO 00/35265), hereinafter “Motz”. This rejection is respectfully traversed.

With respect to Claim 10 (and dependent Claims 11-13), Applicant has amended such claim to recite the features previously recited in Claim 15. Applicant traverses the rejection of amended Claim 10 for reasons given below regarding the 35 U.S.C. § 103 rejection of Claim 15.

¹ On June 1, 2009, the Supreme Court of the United States granted the patent applicants' petition for writ of certiorari in *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008) (*en banc*).

Further with respect to Claim 11, such claim is directed to an ability to transmit stored data from a harvester to a forwarder. The cited Motz reference does not teach such a capability. Instead, Motz describes a centralized site office that is able to communicate with remote systems – but does not describe that the remote systems are able to communicate with one another (Motz page 10, lines 10-21). Such centralized control, where a first system and a second system each communicate with a centralized control system, but not with one another, can also be seen in Motz Figure 2, elements 110, 150 and 250. Applicant has amended Claim 11 to further clarify this distinction, and therefore it is urged that Claim 11 is not anticipated by Motz.

Further with respect to Claim 13, Applicant has amended such claim in accordance with the Specification description in paragraphs 0022, 0026 and 0028 to specify an ability for user-override of the obtained background data – which advantageously allows a user to specify other data to override the data acquired by the sensor. It is urged that the cited reference to Motz does not teach or suggest such a capability as only an operator display is contemplated by such teachings (Motz page 10, lines 1-9).

With respect to Claim 14, Applicant has amended such claim to be in independent form, and to clarify both (1) the unloaded harvester material aspect, and (2) the marking aspects of such claim. As further described below with respect to Claims 1 and 4, Motz would have no need for a methodology associated with unloaded harvester material or marking thereof due to the desire to directly load a tractor/bin from the harvester in order to facilitate an efficient operation (Motz page 17, lines 1-23). Thus, it is urged that the present amendment to Claim 14 has overcome the rejection of such claim under 35 U.S.C. § 102(b).

With respect to Claim 23 (and dependent Claim 29), Applicant has amended such claim in similar fashion to Claim 1 in order to clarify the material location aspect of such claim, in contrast to Motz' harvester location determination. Applicant thus traverses the rejection of Claim 23 (and dependent Claim 29) for similar reasons to those given below with respect to amended Claim 1.

Therefore the rejection of Claims 10, 11, 13, 14, 23, and 29 under 35 U.S.C. § 102(b) has been overcome.

III. 35 U.S.C. § 103, Obviousness

Claims 1-7, 12, 15-22, and 24-28 stand rejected under 35 U.S.C. § 103(a) as being obvious over Motz in view of Hayami et al. (U.S. Patent 5,369,588), hereinafter “Hayami”. This rejection is respectfully traversed.

Generally, the present invention provides an improved technique for locating harvested material that has been placed by a harvester at various geographic locations within a work area (Specification paragraphs 001-002). In contrast, the teachings of the primary reference to Motz describe a system for timing the direct loading of material by a harvester into another transport vehicle such that the harvester is efficiently utilized to avoid wait times when its load is full (Motz page 8, lines 6-28 and page 17, lines 1-23). Because the location of the material is always known (it is either on the harvester, the tractor or the truck), there is no need to specially determine a material’s location because it is already known to the Motz system (it is either on the harvester, the tractor or the truck). In contrast, per the present invention the material location is not known – since the material is periodically unloaded from the harvester and must be located by a forwarder – and thus the present claims provide a unique system and method for determining the material location of the unloaded harvested material.

Specifically with respect to Claim 1, such claim has been amended to clarify that the material is not specially tied to a particular vehicle as is provided by the Motz system. Instead, the material can be unloaded within a work area for subsequent retrieval by a forwarder. In contrast, Motz requires that the material be maintained on the harvester until it is directly retrieved by a tractor/bin. As such, the relative location of the harvested material is always known (on a vehicle), so a person of ordinary skill in the art would not have been motivated to modify the teachings of the cited references in accordance with the material locate features of amended Claim 1.

In addition, because Claim 1 also recites selecting a preferential path plan *between* the forwarder location and the material location, these locations are also different from one another since if they were the same location, there would be no need to perform such selecting step.

Applicant initially traverses the rejection of Claims 2-7 for reasons given above with respect to Claim 1 (of which Claims 2-7 depend upon).

Further with respect to Claim 4, Applicant has amended such claim in accordance with the Specification description at paragraphs 0019 and 0034, and as depicted by elements 308 and

206 of Figure 3. In particular, Claim 4 has been amended to recite both a harvester location and a material location. In contrast, the cited reference to Motz does not contemplate such claimed features, as the Motz system maintains the harvested material within its harvester, until it is loaded to its tractor/bin (Motz page 1, lines 26-29; page 2, lines 1-13; page 3, lines 26-29).

Indeed, Motz is keen on determining exactly when the hopper on the harvester will become full, so that a tractor/bin will be available at that time to directly load harvested material directly from the harvester to the forwarder/bin (Motz page 5, lines 6-20; page 11, lines 4-15). Therefore, it is further urged that amended Claim 4 would not have been obvious in view of the cited references due to Motz' expressed desire to efficiently determine what time a harvester bin will become full and needs to be directly loaded to a tractor/bin.

Further with respect to Claim 7, such claim has been amended in accordance with the Specification description in paragraphs 0022, 0026, 0028 and 0055, to recite that both the background data as well as the material data are specified by a user. It is urged that none of the cited references teach or suggest such capability.

With respect to Claim 10 (and dependent Claims 11-13 and 16-18), such claim has been amended to include the features of dependent Claim 15. It is urged that the cited references do not teach or suggest identifying a preferential path between a forwarder location and a location of *unloaded* materials, for similar reasons to those described above with respect to amended Claim 1.

Further with respect to Claim 13, such claim has been amended in accordance with the Specification description in paragraphs 0022 and 0055, to recite that the background data can be overridden by a user. It is urged that none of the cited references teach or suggest such capability – which advantageously allows for a user to override or supplement the background data that is obtained.

With respect to Claim 14 (and dependent Claims 15 and 19-22), Applicant has amended such claim to be in independent form, and to introduce the ‘unloaded’ material location characteristics as described herein above with respect to Claim 1. Claim 14 has also been amended to further define the ‘marker’ aspect of such claim, where the marker is advantageously used to locate the unloaded materials. It is urged that none of the cited references teach or suggest locating unloaded materials using such a marker, and therefore the amendment to Claim 14 has overcome the present rejection of such claim under 35 U.S.C. § 103(a).

Applicant initially traverses the rejection of Claims 24-28 for reasons given above with respect to Claim 23 (of which Claims 24-28 depend upon).

Further with respect to Claim 28, such claim recites “The system according to claim 23 further comprising a user interface for entering the material data to supplement or complement an output of the harvested material attribute sensor”. As can be seen, per the features of Claim 28 a user interface is included with the system of Claim 23, where material data to supplement/complement an output of a harvested material attribute sensor is entered (also see Specification paragraphs 0022, 0026 and 0028, for example).

In rejecting Claim 28, the Examiner asserts that Motz discloses a system with a user interface, and Hayami teaches a user interface for entering material data at col. 2, lines 62-68 in that there Hayami teaches a ‘manipulating unit where the user can enter data’. Applicant urges that even assuming arguendo that such assertions are true, such alleged teachings do not establish a teaching or suggestion of a user interface for *entering the material data to supplement or complement an output of the harvested material attribute sensor*, as claimed. Instead, such assertion merely establishes a teaching of a *user having an ability to enter data*. Importantly, the data that is described as being input by Hayami is destination data of a desired destination that a user wishes to travel to. In contrast, per Claim 28 the data that is entered is material data to *supplement or complement an output of the harvested material attribute sensor*. A teaching of entering a desired user destination, as described by Hayami, does not teach or suggest entering of material data to *supplement or complement an output of the harvested material attribute sensor*, as claimed. Thus, Claim 28 has been erroneously rejected due to this *prima facie* obviousness deficiency.²

Therefore the rejection of Claims 1-7, 12, 15-22, and 24-28 under 35 U.S.C. § 103(a) has been overcome.

2 In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. Id. All words in a claim must be considered in judging the patentability of that claim against the prior art.” MPEP 2143.03; In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). **If the examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned.** In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

IV. 35 U.S.C. § 103, Obviousness

Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being obvious over Motz in view of Hayami as applied to claim 1 above, and further in view of Weigelt et al. (U.S. Patent 5,712,782), hereinafter “Weigelt”. This rejection is respectfully traversed.

Applicant initially traverses the rejection of Claims 8 and 9 for reasons given above with respect to Claim 1 (of which Claims 8 and 9 depend), as the newly cited reference to Weigelt does not overcome the teaching/suggestion deficiencies identified hereinabove with respect to Claim 1.

With respect to Claim 8, such claim recites “The method according to claim 1 wherein selecting a preferential path plan further comprises considering environmental factors to reduce soil compaction from the forwarder”. As can be seen, the features of Claim 8 are directed to further details pertaining to the selection of a preferential path plan, in that environmental factors are considered in order to reduce soil compaction from the forwarder.

In rejecting Claim 8, the Examiner alleges that Weigelt teaches that moisture data is used to determine the ability to travel over the field. Applicant urges that such field travel capability determination is not described as being *used in determining an actual preferential path plan selection between a forwarder location and a material location*, as claimed, but instead describes using moisture data to determine whether the field can be traveled on at all (Weigelt col. 5, lines 53-59; col. 7, lines 51-55). Thus, it is further urged that Claim 8 is not obvious in view of the cited references due to this additional *prima facie* obviousness deficiency.

Further with respect to Claim 9, such claim recites “The method according to claim 1 wherein selecting a preferential path plan further comprises considering vehicle dynamic constraints related to the handling and maneuvering capabilities of the forwarder that is transporting a certain corresponding level of a load of the harvested material”. Similar to Claim 8, Claim 9 is also directed to further details pertaining to the selection of a preferential path plan, where dynamic vehicle constraints are taken into consideration for such preference path plan selection.

In rejecting Claim 9, the Examiner alleges that Weigelt teaches all aspects of Claim 9 at the same cited passage at col. 7 that was used in the rejection of Claim 8. Applicants urge that this cited passage at Weigelt col. 7, lines 40-55 describes using weather conditions such as wind and moisture to determining optimal operating parameters (also see Weigelt col. 2, lines 56-67).

This cited reference does not describe use of parameters associated with a transport vehicle such as a *forwarder or its associated level of load of harvested materials* in such optimal operating parameter determination. Thus, it is further urged that Claim 9 is not obvious in view of the cited references, and has been improperly rejected.

Therefore the rejection of Claims 8 and 9 under 35 U.S.C. § 103(a) has been overcome.

V. Conclusion

The subject application is patentable over the cited references and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite prosecution or aid the examination of this application.

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Respectfully submitted,

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